

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

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Employer Identification Number:

Contact Person - ID Number:

Contact Telephone Number:

LEGEND

UIL 4945.04-04

W= Organization
X= Corporation
Y= Scholarship Program
Z= Administrator

Dear :

We have considered your request for advance approval of your employer-related grant-making program under section 4945(g)(1) of the Internal Revenue Code, dated December 18, 2008.

Our records indicate that W was recognized as exempt from Federal income tax under section 501(c)(3) of the Code and that it is classified as a private foundation as defined in section 509(a).

Your letter indicates that W will operate a grant-making program called Y.

The purpose of Y is to make scholarship awards under an employer-related grant program to benefit the dependent children of employees at X. Y is to help eligible individuals solely for the purpose of making it financially possible to obtain an education.

The scholarships will be administered by Z which is an exempt organization under Section 501(c)(3) of the Internal Revenue Code or a similar organization. Y will be awarded to dependent children of full-time employees of X who have a minimum of one year of service with X as of the application deadline date. There will be no other eligibility requirements related to employment with X. Dependent children are defined as naturally and legally adopted children or stepchildren age 25 or younger living in the employee's household or primarily supported by the employee.

Persons eligible for the scholarship are dependent children: (1) who are high school seniors or graduates who plan to enroll, or students who are already enrolled in a full-time undergraduate course of study at an accredited two or four-year college or university, or vocational-technical school, and (2) meet the minimum standards for admission to an educational institution for which the scholarships are available. The educational institution must normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of students in attendance at the place where its educational activities are carried on, within the meaning of IRC section 170(b)(1)(A)(ii).

The selection of individual scholarship recipients will be made by a selection committee designated by Z. Awards will be made solely in the order recommended by Z, and only the selection committee can vary the amounts of scholarships awarded. W may reduce but may not increase the number of scholarships recommended by the selection committee. Scholarships may be granted to dependents of exempt and non-exempt employees based on the number of applications submitted in each employee group. W may require the selection committee to forward to W the selections made by the selection committee for the purpose of verifying the selection criteria followed by the selection committee in considering the candidates and in making its selections comply with these scholarship award procedures. The selection committee will be totally independent of W and X except for the participation on the committee. Selection committee members will not be in a position to derive a private benefit, directly or indirectly. No member of the selection committee will be a former employee of W or X, but will consist of individuals knowledgeable in the education field so that they have the background and knowledge to properly evaluate the potential applicants.

The criteria for selecting scholarship recipients are as follows: (1) selection of recipients will be based on objective standards completely unrelated to the employment of the applicants or their parents/guardians or to X's line of business. The objective standards may include prior academic performance and future potential, performance on tests designed to measure ability and aptitude for higher education, leadership and participation in school and community activities, work experience, unusual personal or family circumstances, recommendations from instructors or other persons unrelated to the candidate, and conclusions drawn from personal interviews as to motivation and character. Financial need may be considered in the future as a standard for determining the recipient. Applicants will be required to submit a complete biographical record, supporting materials, including academic report, information relating to work history, community involvement, statement of educational and career aspirations and goals, a personal statement and letters of reference.

Applicants will be solicited through X's newsletters, emails, and/or intranet directed to all full-time employees of X. W will be the organization identified as the grantor of the scholarships. Public announcements of scholarships will be made by the selection committee or W.

Scholarships will be available for all courses of study. There will be no conditions on what the recipient must study in order to receive the scholarship.

Each recipient will receive a letter sent by Z, which will outline the terms and conditions of the scholarship. The recipient will be required to communicate his/her acceptance by returning a signed copy of the letter, accepting the terms and conditions of the scholarship, to Z. The terms and conditions will include the specific purpose of the scholarship, its duration, the total amount of the scholarship, requirements for submitting reports and documentation, including due dates for submitting reports and documents. The recipient will be advised in the letter that the amounts granted may only be used for his/her tuition and fees required for enrollment (including room and board) or attendance at the educational institution and fees, books, supplies, and equipment required for courses of instruction at the educational institution. The recipient will be told if any portion of the scholarship is not so used, it must be returned to W.

Scholarships may be paid directly to the recipient by Z, or to the applicable educational institution on behalf of the recipient. No payment will be made to an educational institution unless the educational institution agrees to use the grant to pay the recipient's expenses only if the recipient is enrolled in good standing at the educational institution.

Z will confirm a recipient's enrollment and arrange to receive a report of the recipient's courses taken and grades received in each academic period. The report must be verified by the educational institution attended by the recipient and will be obtained at least once a year. A final report will be obtained upon completion of the course of study at the educational institution. This confirmation and verification procedure will not be conducted if the scholarship is awarded directly to the educational institution.

W will review each report submitted by Z and/or the recipient to determine if the scholarship purposes are being or have been fulfilled. W will look into any questions that have been raised requiring further examination or investigation. The investigation will occur when the reports indicate any or all of the scholarship funds are being used for purposes other than the intended purpose for the scholarship. This will include the failure to submit reports after a reasonable time has elapsed from their due date. If W determines any part of the scholarship has been used for improper purposes, W will take all reasonable and appropriate steps to recover diverted funds or insure the restoration of diverted funds and the dedication of the other scholarship funds held by the grantee. If W determines any part of the scholarship has been used for improper purposes and the recipient has not previously diverted scholarship funds, W will withhold further payments on the particular scholarship until: (1) it has received the recipient's assurances that future diversions will not occur, (2) any delinquent reports have been submitted, and (3) it has required the recipient to take extraordinary precaution to prevent future diversion from occurring. If W determines any part of the scholarship has been used for improper purposes and the recipient has previously diverted scholarship funds, W will withhold further payment until the three preceding conditions have been met and the diverted funds have been recovered or restored.

W will retain records pertaining to all scholarships to individuals. These records will include all information W secures to evaluate the qualifications of potential recipients, identification of recipients, specification of the amount and purpose of each scholarship and any follow-up information which W obtains in complying with the requirements for obtaining reports and investigating jeopardized grants.

Once the scholarship is awarded it will not be terminated if the recipient's parent or guardian terminates employment with X. There will be no express or implied suggestion, condition or requirement that the recipient's parent or guardian render future services. The program will not be a means of incentive to recruit employees.

Renewal of the scholarship will be determined on a case by case basis. The awards may be renewed up to three years or until a bachelor's degree is earned, whichever ever occurs first, provided the pre-determined cumulative grade point average has been maintained. The renewal is not dependent on the recipient's parent or guardian still being employed by X.

Sections 4945(a) and (b) of the Code impose certain excise taxes on "taxable expenditures" made by a private foundation.

Section 4945(d)(3) of the Code provides that the term "taxable expenditure" means any amount paid or incurred by a private foundation as a grant to an individual for travel, study, or other similar purposes by such individual, unless such grant satisfies the requirements of subsection (g).

Section 4945(g) of the Code provides that section 4945(d)(3) shall not apply to individual grants awarded on an objective and nondiscriminatory basis pursuant to a procedure approved in advance if it is demonstrated that:

- (1) The grant constitutes a scholarship or fellowship grant which is subject to the provisions of section 117(a) and is to be used for study at an educational organization described in section 170(b)(1)(A)(ii);
- (2) The grant constitutes a prize or award which is subject to the provisions of section 74(b), if the recipient of such prize or award is selected from the general public; or
- (3) The purpose of the grant is to achieve a specific objective, produce a report or similar product, or improve or enhance a literary, artistic, musical, scientific, teaching, or other similar capacity, skill, or talent of the grantee.

Section 53.4945-4(c)(1) of the Regulations provides that to secure approval, a private foundation must demonstrate that:

- (i) Its grant procedure includes an objective and nondiscriminatory selection process;
- (ii) Such procedure is reasonably calculated to result in performance by grantees of the activities that the grants are intended to finance; and
- (iii) The foundation plans to obtain reports to determine whether the grantees performed activities that the grants are intended to finance.

Revenue Procedure 76-47, 1976-2 C.B. 670, sets forth guidelines to be used in determining whether a grant made by a private foundation under an employer-related program to a child of an employee of the particular employer to which the program relates is a scholarship grant that meets the provisions of section 117(a) of the Code (as that section read before the Tax Reform Act of 1986). If a private foundation's program satisfies the seven conditions set forth in Sections 4.01 through 4.07 of Rev. Proc. 76-47 and meets the percentage test described in Section 4.08, the Service will assume the grants meet the provisions of section 117(a), as that section read before the Tax Reform Act of 1986.

You have agreed that procedures in awarding grants under your program will be in compliance with Sections 4.01 through 4.07 of Rev. Proc. 76-47 (without regard to the amendments to section 117(a) made by the Tax Reform Act of 1986). In particular, the selection of individual grant recipients will be made by a selection committee the members of which are totally independent and separate from the private foundation, the foundation's creator, and the relevant employer. The grants will not be used as a means of inducement to recruit employees nor will a grant be terminated if the employee leaves the employer. The recipient will not be restricted in a course of study that would be of particular benefit to the relevant employer or to the foundation.

Section 4.08 of Rev. Proc 76-47 provides a percentage test guideline. It states in the case of a program that awards grants to children of employees of a particular employee, the program meets the percentage test if either of the following tests are met: the number of grants awarded under that program in any year to such children do not exceed 25 percent of the number of employees' children who were eligible, were applicants for such grants, and were considered by the selection committee in selecting the recipients of grants in that year, or the number of grants awarded under the program in any year to such children does not exceed 10 percent of the number of employees' children who can be shown to be eligible for grants (whether or not they submitted an application) in that year.

You have agreed that your program will meet the requirements of either the 25 percent or 10 percent percentage test of Section 4.08 applicable to a program that awards grants to children of employees of a particular employer.

Records should be maintained to show that you meet the applicable percentage test of Section 4.08

This determination is issued with the understanding that in applying the 10 percent test applicable to employees' children set forth in Rev. Proc. 76-47, you will include as eligible only those children who meet the eligibility standards described in Rev. Proc. 85-51, 1985-2 C.B. 717.

This determination will remain in effect as long as the procedures in awarding grants under your program remain in compliance with Sections 4.01 through 4.08 of Rev. Proc. 76-47 (without regard to the amendments to section 117(a) made by the Tax Reform Act of 1986). If you enter into any other program covering the same individuals, the percentage test of Rev. Proc. 76-47 must be met in the aggregate.

Based on the information submitted and assuming your award programs will be conducted as proposed, your procedures for granting the awards comply with the requirements contained in section 4945(g)(1) of the Code and that awards granted in accordance with such procedures will not constitute "taxable expenditures" within the meaning of section 4945(d)(3).

In addition, we have determined that awards made under your procedures are excludable from the gross income of the recipients subject to the limitations provided by section 117 of the Code.

This determination is conditioned on the understanding that there will be no material change in the facts upon which it is based. It is further conditioned on the premise that no grants will be awarded to foundation managers, or members of the selection committee, or for a purpose that is inconsistent with the purpose described in section 170(c)(2)(B) of the Code.

The approval of your employer-related grant-making program is a one-time approval. This determination only covers the grant programs described above. Thus, approval shall apply to subsequent grant programs only as long as the standards and procedures under which they are conducted do not differ materially from those described in your request.

Any funds you distribute to individuals must be made on a true charitable basis in furtherance of the purposes for which you are organized. Therefore, you should maintain adequate records and histories so that any or all grant distributions can be substantiated upon request by the Internal Revenue Service.

This determination is directed only to the organization that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as a precedent.

You must report any future changes in your grant making procedures. Please keep a copy of this letter in your permanent records.

If you have any questions, please contact the person whose name and telephone number are shown above.

Sincerely yours,

Robert Choi
Director, Exempt Organizations
Rulings and Agreements